Jay D. Reed d/b/a Jay D. Reed Concrete Finishing Company and Jay D. Reed Cement Finishing and Foundation for Fair Contracting of Western Pennsylvania. Case 6-CA-25934

CORRECTION

On March 31, 1994, the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding.

Please substitute the attached page 3 for your copy to reflect the correction in the last paragraph to read "WE WILL remove"

Dated: April 7, 1994

diate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct, with interest.

WE WILL remove from our files any reference to the unlawful layoffs and notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

JAY D. REED D/B/A JAY D. REED CONCRETE FINISHING COMPANY AND JAY D. REED CEMENT FINISHING

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March 31, 1994

DECISION AND ORDER

By Members Stephens, Devaney, and Browning

Upon a charge filed by the Charging Party on October 28, 1993, the Acting General Counsel of the National Labor Relations Board issued a complaint on December 20, 1993, against Jay D. Reed d/b/a Jay D. Reed Concrete Finishing Company and Jay D. Reed Cement Finishing, the Respondent, alleging that it has violated Section 8(a)(1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On March 1, 1994, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On March 3, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Acting Regional Director issued an order on January 10, 1994, extending the time for filing an answer to January 24, 1994. Furthermore, by letter dated January 26, 1994, the Region notified the Respondent that unless an answer were filed within 3 days of the receipt of the letter or unless an extension of time were granted, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a sole proprietorship with an office and place of business in Hopewell, Pennsylvania, has been owned by Jay D. Reed and has been engaged in the construction industry as a concrete finishing contractor. During the 12-month period ending September 30, 1993, the Respondent, in conducting its business operations, provided services valued in excess of \$50,000 for other enterprises located within the Commonwealth of Pennsylvania, which enterprises are directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About August 10, 1993, the Respondent's employees Wayne L. Gardner and Lee R. Gardner engaged in concerted activities with each other for the purposes of mutual aid and protection by communicating with and furnishing information to the Foundation for Fair Contracting of Western Pennsylvania, the Charging Party, concerning the failure of the Respondent to pay its employees the prevailing wage rate while working at the state college, Pennsylvania parking garage construction site. About October 8, 1993, the Respondent laid off its employees Wayne L. Gardner and Lee R. Gardner and failed and refused to recall them until about November 12, 1993. The Respondent engaged in this conduct because Wayne L. Gardner and Lee R. Gardner engaged in the conduct described above and to discourage employees from engaging in these or other concerted activities.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) by laying off Wayne L. Gardner and Lee R. Gardner and failing and refusing to recall them until about November 12, 1993, we shall order the Respondent to offer them, to the extent it has not already

done so, immediate and full reinstatement to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the unlawful layoffs. Backpay shall be computed in accordance with F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful layoffs, and to notify Wayne L. Gardner and Lee R. Gardner, in writing, that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Jay D. Reed d/b/a Jay D. Reed Concrete Finishing Company and Jay D. Reed Cement Finishing, Hopewell, Pennsylvania, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Laying off employees or failing or refusing to recall them because they communicate with or furnish information to the Foundation for Fair Contracting of Western Pennsylvania concerning the failure of the Respondent to pay employees the prevailing wage rate or because they engage in any other protected concerted activity or to discourage employees from engaging in these or other concerted activities.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Offer Wayne L. Gardner and Lee R. Gardner, to the extent it has not already done so, immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's unlawful conduct, with interest as set forth in the remedy section of this decision.
- (b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (c) Expunge from its files any and all references to the unlawful layoffs of Wayne L. Gardner and Lee R. Gardner and notify these employees, in writing, that this has been done.

- (d) Post at its facility in Hopewell, Pennsylvania, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.
- (e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 1994

James M. Stephens,	Member
Dennis M. Devaney,	Member
Margaret A. Browning,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT lay off employees or fail or refuse to recall them because they communicate with or furnish information to the Foundation for Fair Contracting of Western Pennsylvania concerning our failure to pay employees the prevailing wage rate or because they engage in any other protected concerted activity or to discourage employees from engaging in these or other concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Wayne L. Gardner and Lee R. Gardner, to the extent we have not already done so, imme-

diate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct, with interest.

WE WILL NOT remove from our files any reference to the unlawful layoffs and notify the employees in writing that this has been done and that the layoffs will not be used against them in any way.

JAY D. REED D/B/A JAY D. REED CONCRETE FINISHING COMPANY AND JAY D. REED CEMENT FINISHING